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CURRENCY AND FOREIGN TRANSACTIONS REPORTING ACT AMENDMENTS

JULY 22, 1980.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ULLMAN, from the Committee on Ways and Means, submitted the following

REPORT

[To accompany H.R. 5961 which on November 27, 1979, was referred jointly to the Committee on Banking, Finance and Urban Affairs and the Committee on Ways and means]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means to whom was referred the bill (H.R. 5961) to amend the Currency and Foreign Transactions Reporting Act to (1) provide for more efficient enforcement of its provisions by making it illegal to attempt to export or import large amounts of currency without filing the required reports; (2) allow United States Customs officials to search for currency in the course of their presently authorized search for contraband articles; and (3) allow for the payment of compensation to informers, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment (stated in terms of the page and line numbers of the introduced bill) is as follows:

Page 3, line 13, strike out "reasonable" and insert "probable".

DESCRIPTION OF PROVISIONS

H.R. 5961 makes several amendments to the Currency and Foreign Transactions Reporting Act (also known as the Bank Secrecy Act of 1970), P.L. 91-508. That Act requires financial institutions to maintain certain types of records of financial institutions and requires individuals to file certain reports on currency and foreign transactions.

Section 1 of H.R. 5961 states that the Act may be cited as the "Currency and Foreign Transactions Reporting Act Amendments of 1980."

Section 2 of the bill amends section 231(a) of the Bank Secrecy Act by expressly making it a crime to *attempt* to export or import cur-

rency above a certain amount without filing the required reports. Existing law does not include an "attempt" provision, and this has resulted in cases where an individual has escaped prosecution because the courts have ruled that a violation of existing law cannot occur until the person actually leaves the U.S. without filing the required report.

Section 2 of the bill also amends the reporting requirements by raising the amount subject to reporting from $5,000 to $10,000. This change was made during the mark-up session of the Committee on Banking, Finance, and Urban Affairs. In order to permit the Departments of Treasury and State to consume existing stocks of printed matter which refer to a $5,000 threshold amount, the increases to $10,000 will not take effect until July 1, 1981.

Section 3 of the bill amends section 235 of the Bank Secrecy Act to allow Customs officers at the border to search for currency or other monetary instruments in excess of $5,000 ($10,000 after July 1, 1981) without a search warrant when *probable cause* exists to suspect that a violation of the reporting requirements is occurring. The Committee amended the applicable standard which was provided in the Banking Committee's version of this provision, i.e. "reasonable cause." When the Bank Secrecy Act was being considered in 1970, Congress specifically expressed its intent that searches for unreported currency should be made only where probable cause exists to believe that a violation has occurred and where a search warrant has been obtained.

Section 4 of the bill adds a new provision to the Currency and Foreign Transactions Reporting Act, entitled "Award of compensation to informants," which authorizes the Secretary of the Treasury to pay an informant up to 25 percent of the amount of a fine, penalty, or forfeiture exceeding $50,000 for a violation of the Act or regulations implementing the Act. The provision authorizes, effective October 1, 1980, an appropriation of such sums as are necessary to carry out the provision.

Section 5 of the bill requires the Secretary of the Treasury to provide within 18 months of the enactment of the bill a report on the effectiveness of the amendments made by this bill.

General Statement

H.R. 5961 represents the first direct amendment to the Bank Secrecy Act, which was passed in 1970 (P.L. 91-508). It was introduced on November 27, 1979 by Representative LaFalce and was jointly referred to the Committee on Banking, Finance and Urban Affairs and the Committee on Ways and Means.

According to the bill's sponsor, the bill is a result of intensive meetings held with the Administration to determine how Congress could help law enforcement officials in their efforts to curtail the flow of drug-related currency. Originally, three bills were introduced in May, 1979—H.R. 4071, H.R. 4072, and H.R. 4073—which were later merged into the omnibus measure, H.R. 5961.

On February 27, 1980, the Banking Committee favorably reported out the bill with three amendments. One amendment increased the monetary amount requiring a report to $10,000, effective on and after July 1, 1981. A second amendment added section 5, requiring the Secretary to report to Congress on the effectiveness of the Act, and the

third amendment makes the effective date October 1, 1980, to assure compliance wth the Budget Act.

Existing law states that "Whoever . . . transports or causes to be transported monetary instruments . . . " into or out of the United States shall file a report of the transaction if the amount exceeds $5,000. The rationale for section 2 of H.R. 5961, which adds the phrase "attempts to transport or have transported" to the provision, is explained in an October 5, 1979 letter of the Treasury Department:

> This Department believes that this proposal is essential in order to eliminate an anomaly which has arisen as a result of the unreported decision in case of *U.S. v. Centeno*, No. 75–660–CR–JE (S.D. Fla March 25, 1976). In that case the defendant while in the process of leaving the United States was discovered to have $250,000 in American currency in his possession which he had failed to report. Although he readily admitted to having knowledge of the reporting requirements, the case was dismissed after the court concluded that a violation cannot occur until the person actually leaves the United States without filing the required report. This Department believes that the proposed attempt provision will remedy this type of situation and give the government a greater tool in halting the financing of large-scale drug trade. (An unreported criminal decision is not unusual.)

If the Centeno decision were allowed to stand, the effectiveness of the Act would be reduced. Given the difficulties of enforcing U.S. law outside of the territorial boundaries of the U.S. this provision is warranted.

Your Committee made one amendment to the bill as reported by the Banking Committee, and it was to section 3 of the bill, which expands the warrantless search authority of Customs. Section 235 of the Bank Secrecy Act allows searches for unreported currency only where probable cause exists to suspect that a violation of the law has occurred *and* where a search warrant has been obtained. The purpose of this requirement, according to the Senate report on the Bank Secrecy Act, was to avoid an excessive burden on persons entering or leaving the country, although it was noted that nothing in the Act would limit the authority of Customs to conduct searches under existing law.

The Banking Committee's version of section 3 would allow Customs to search for unreported currency without a search warrant when *reasonable cause* exists to suspect that a violation of the reporting requirements is occurring. The rationale for this change was that the present gravity of international drug traffic warrants the expansion of Customs warrantless search authority.

The Committee amended this section by allowing the warrantless searches only when probable cause exists to suspect that a violation is occurring. Although the "border search" exception to the traditional probable cause requirement has been a long established principle for *incoming* searches, there has never been a statement from the United States Supreme Court as to whether *exit* searches fall within the ambit of the border search doctrine. The Chairman of the Judiciary Committee's Subcommittee on Civil and Constitutional Rights urged deletion of this entire provision, stating that it "would be an unprecedented

break from long-established law on the subject and is . . . unconstitutional." Even the Justice Department, while supporting the bill, stated that this provision "involves a close constitutional question" in authorizing a warrantless exit search based on less than probable cause.

In light of these serious constitutional questions, the Committee felt that the use of the more judicially acceptable "probable cause" standard would be preferable to the lesser standard of "reasonable cause."

The Committee wishes to make it clear that nothing in this legislation should be construed to limit the authority of Customs to carry out its mandate under existing law, and that this provision is meant to give Customs greater enforcement authority with respect to the reporting requirements of the Bank Secrecy Act. The Committee is greatly concerned over large-scale, international drug traffic, and hopes that this provision will be used to combat that type of activity, and other violations of the currency reporting requirements. Moreover, there is no intent to limit the current authority of Customs regarding incoming border searches.

Another matter that was raised with respect to the administration of this provision concerned the cost burden imposed on the private sector. A Customs official stated that there is no intention to set up new facilities at the expense of the private sector, and there is no intent to shift the cost of administering the provision to anybody other than Customs.

Committee Action

The Subcommittee on Trade of the Ways and Means Committee heard testimony on this bill from the Administration and public witnesses on April 17, 1980. The Treasury Department, on behalf of the Administration, testified in support of the bill, stating that the Federal law enforcement community needs the legislation to combat the financing of large-scale drug trade. Witnesses who opposed the bill, however, felt that the legislation was unconstitutional, in light of the expanded search authority. On July 1, the Committee on Ways and Means ordered H.R. 5961 favorably reported to the House by voice vote with one amendment. The Committee believes that the bill as amended is meritorious and urges that it be passed.

Effect of the Bill on the Revenues and Vote of the Committee in Reporting the Bill

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the following statements are made relative to the effect of this bill on the revenues. Your Committee concurs in the following cost estimate provided by the Congressional Budget Office under rule XI, clause 2 (l)(3)(C), and adopts it as its own:

U.S. Congress,
Congressional Budget Office,
Washington, D.C., July 2, 1980.

Hon. Al Ullman,
Chairman, Committee on Ways and Means,
U.S. House of Representatives, Washington, D.C.

Dear Mr. Chairman: In accordance with the Budget Act, the Congressional Budget Office has examined H.R. 5961, which would make

it a crime to attempt to export or import currency without filing the proper forms.

The bill does not provide any new budget authority or any new or increased tax expenditures.

In accordance with Section 403 of the Budget Act, the Congressional Budget Office has determined that because of Title III of H.R. 5961, the revenue effects of the bill cannot be evaluated. This is because the amount of money paid by the Secretary of the Treasury to informants for furnishing information cannot be determined at this time.

We are in agreement with the statement provided by the International Trade Commission, and the method used to derive it.

Sincerely,

ALICE M. RIVLIN, *Director.*

In compliance with clause 2(l)(2)(B) of rule XI of the Rules of the House of Representatives, the following statement is made relative to the vote of the Committee in reporting the bill. The Committee ordered H.R. 5961 favorably reported by voice vote with one amendment.

OTHER MATTERS REQUIRED TO BE DISCUSSED UNDER HOUSE RULES

In compliance with clauses 2(l)(3) and 2(l)(4) of rule XI of the Rules of the House of Representatives, the following statements are made:

With regard to subdivision (A) of clause 3 relating to oversight findings, the Committee advises that in its review of the special circumstances with respect to the administration of the Currency and Foreign Transactions Reporting Act, it concluded that it would be desirable to enact legislation amending that Act, by reason of the considerations outlined above in the general statement.

With regard to subdivision (B) of clause 3 and after consultation with the Director of the Congressional Budget Office, the Committee states that the changes made by this bill involve no new budgetary authority, or new or increased tax expenditures.

In compliance with subdivision (C) of clause 3, the Committee advises that the Director of the Congressional Budget Office has examined the Committee's revenue estimate and agrees with the methodology used and in the resulting dollar estimate.

With respect to subdivision (D) of clause 3, no oversight findings or recommendations have been submitted to the Committee by the Committee on Government Operations concerning the subject matter of H.R. 5961.

In compliance with clause 2(l)(4) of rule XI, the Committee states that the bill would not have an inflationary impact on prices and costs in the operation of the general economy.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

CURRENCY AND FOREIGN TRANSACTION REPORTING ACT

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CHAPTER 3.—REPORTS OF EXPORTS AND IMPORTS OF MONETARY INSTRUMENTS

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[§ 231. Reports required

[(a) Except as provided in subsection (c) of this section, whoever, whether as principal, agent, or bailee, or by an agent or bailee, knowlingly—

[(1) transports or causes to be transported monetary instruments—

[(A) from any place within the United States to or through any place outside the United States, or

[(B) to any place within the United States from or through any place outside the United States, or

[(2) receives monetary instruments at the termination of their transportation to the United States from or through any place outside the United States

in an amount exceeding $5,000 on any one occasion shall file a report or reports in accordance with subsection (b) of this section.]

(a) PERSONS REQUIRED TO FILE.—Except as provided in subsection (c) of this section, whoever, whether as principal, agent, or bailee, or by an agent or bailee, knowingly—

(1) transports or causes to be transported, or attempts to transport or have transported, monetary instruments—

(A) from any place in the United States to or through any place outside the United States, or

(B) to any place within the United States from or through any place outside the United States, or

(2) receives monetary instruments at the termination of their transportation to the United States from or through any place outside the United States.

in an amount exceeding $5,000 on any one occasion shall file a report or reports in accordance with subsection (b) of this section.

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§ 235. Enforcement authority

(a) * * *

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(b) any customs officer may stop, search and examine without a search warrant, any vehicle, vessel, aircraft or other conveyance, envelope or other container, or person entering or departing from the United States on which or whom he shall have probable cause to suspect there are monetary instruments in the process of being transported for which a report is required under section 231 of this Act.

[(b)] *(c)* This section is not in derogation of the authority of the Secretary under any other law.

§ 236. Award of compensation to informants

(a) The Secretary is authorized to pay a reward to any individual who provides original information which leads to a recovery of a criminal fine civil penalty, or forfeiture, which exceeds $50,000, for any violation of this Act of any regulation issued hereunder.

(b) The amount of the reward, if any, is to be designated by the Secretary, but shall not exceed 25 percent of the net amount of the fine, penalty, or forfeiture collected or $250,000, whichever is lesser, in a case in which the person was an informant.

(c) Any officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of official duties is not eligible for payment under this section.

(d) There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

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